

The 20th July, 1987

No. 9/1/87-6 Lab./5539.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/S. K. K. & Co. 212, Industrial Area, Panchkula (Ambala).

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT ;
AMBALA

Reference No. 284 of 1985

SHRI CHAMAN LAL S/O LATE SHRI LAL CHAND VILLAGE DEVI NAGAR P. O. PANCHKULA
DISTT. AMBALA AND THE MANAGEMENT OF THE MESSERS K. K. & CO. 212 INDUSTRIAL
AREA PANCHKULA (AMBALA)

Present :—

None for workman.

Shri R. L. Chopra for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Chaman Lal and Messrs K. K. & Co. 212, Industrial Area, Panchkula to this Court. The terms of the reference are as under :

“Whether termination of services of Shri Chaman Lal, workman is just and correct, if not to what relief is he entitled ?”

Workman alleged that he had been employed for the last six years as a Press Man in the respondent management. His services were terminated on 27th July, 1985 in violation of provisions of section 25 (F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent management contested the dispute & contended that management never retrenched nor terminated services of the workman. Shri Chaman Lal remained in the job of the respondent management up to 19th June, 1985 while on 20th June, 1985 he proceeded on leave and thereafter ; he started absenting w.e.f. 21st June, 1985 and never reported on duty. Thereafter & however, he appeared on 7th July, 1985 and promised to report on duty on 8th July, 1985 or 9th July, 1985 but he never joined service of respondent, so he remained absent and abandoned his job of his own, so he is not entitled to the relief claimed for.

On the pleadings of the parties issues were framed. Reference was fixed for workman evidence but neither workman nor his A. R. appeared. Management was presented by Shri R. L. Chopra, so reference is dismissed in default.

Dated : 2nd June, 1987

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst No. 1230

dated : 8th June, 1987

Forwarded (four copies) to the Financial Commissioner & Secretary to Govt., Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 24th July, 1987

No. 9/3/87-6Lab./5681.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court Faridabad in respect of the dispute between the Workman and the management of M/S. The Palwal Primary Cooperative Agriculture Development Bank Limited Palwal, Faridabad.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER LABOUR COURT
FARIDABAD

Reference No. 143 of 1987

Between

SHRI YASHWANT RAJ, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. THE
PALWAL PRIMARY COOPERATIVE AGRICULTURE DEVELOPMENT BANK, LIMITED, PALWAL,
FARIDABAD

Present :

Workman with Shri S.C. Srivastava.

None for the respondent management.

AWARD

This reference under section 10 (1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the state of Haryana (Department of Labour),—*Vide* its endoresement No. ID/FD/50-37/10328-33, dated 10th March, 1987, to adjudicate upon the dispute of service matter covered by Second Schedule under section 7 of the said Act, arisen between Shri Yashwant Rai, workman and the respondent management of M/S. Palwal Primary Cooperative Agriculture Development Bank, Ltd., Palwal, (Faridabad) Accordingly it has been registered as reference No. 143 of 1987.

2. Shri Yashwant Rai was in the employment of the respondent as a Clerk. His services were terminated on 17th June, 1986. The allegations are that termination order was passed contrary to statutory requirements and as such he be reinstated into his job with full back wages and with continuity of service.

3. Notice was issued to the respondent but despite of the same on body has turned up to contest the same and as such exparte proceedings have been recorded in the case. In support of the claim, workman has referred to Ex. W-1 joining report dated 1st April, 1984. He was appointed as a Clerk *Vide*,—letter Ex. W-2. His services were however terminated on 17th April, 1986,—*Vide* order Ex. W-3. It is quite apparent from above mentioned record that he was employed from 1st May, 1984 and he had worked for more than one year continuous service as defined in Section 25-B of the said Act. In this manner he is entitled for protection under Section 25-F of the said Act. Admittedly no notice pay or retrenchment compensation was paid to him and as such a bad order was passed which is hereby revoked. In the circumstances of the case he stands reinstated with continuity of service and further with full back wages at Rs. 1,113 per month with effect from 17th June, 1985 to the date of rejoining. It is exparte award against the respondent.

Dated : 4-6-1987

A.S. CHALIA,

Presiding Officer,

Labour Court, Faridabad.

Endorsement No. 1283, dated 7th July, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department Chandigarh as required under section 15 of I.D. Act.

A.S. CHALIA,

Presiding Officer,

Labour Court, Faridabad.

The 28th July, 1987.

No. 9/4/87-6 Lab./5672.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the Workman and the management of M/s Northern India Iron and Steel Company Ltd., 20/3 Mathura Road, Faridabad.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 64/1986

between

SHRI SHYAM SUNDER, SON OF RISAL SINGH CARE OF SUNEHARI LAL, LABOUR LEADER, AHIRWARA, BALLABGARH AND THE MANAGEMENT OF M/S NORTHERN INDIA IRON AND STEEL COMPANY LTD. 20/3 MATHURA ROAD, FARIDABAD

Present.— Shri K.P. Aggarwal, A.R. for the Management.

None for the Workman.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Shyam Sunder Workman and the Management of M/s Northern India Iron and Steel Company Ltd., 20/3, Mathura Road, Faridabad, to this Tribunal for adjudication :—

Whether the termination of services of Shri Shyam Sunder is justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to the parties who appeared. They filed their respective pleadings and issues were settled. Subsequently neither the workman nor his authorised representative appeared and as such *ex parte* proceedings were ordered against the workman.

3. The Management has submitted a copy of settlement Exhibit S-1 and receipt Exhibit S-3 which show that the workman has amicably settled the dispute with the Management after receiving a draft of Rs. 25,000. He has relinquished his rights for reinstatement. There are no reasons to disbelieve the genuineness of the settlement particularly when the workman has not come forward to challenge its authenticity.

4. In view of the settlement between the parties no dispute survives for adjudication. The award is passed accordingly.

Dated the 2nd June, 1987.

S. B. AHUJA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 766, dated the 30th June, 1987

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/4/87-6 Lab./5954.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the Management of (i) Executive Engineer, Division No. 2, Haryana Urban Development Authority, Faridabad and (ii) Haryana Urban Development Authority, Sector 16, Faridabad.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 21/1986

between

SHRI TEK CHAND, SON OF SH. LAKHI RAM, CAREOF SHRI M. K. BHANDARI, HOUSE NO. 360, SECTOR-19, FARIDABAD AND THE MANAGEMENT OF EXECUTIVE ENGINEER, DIVISION NO. 2, HARYANA URBAN DEVELOPMENT AUTHORITY, FARIDABAD AND (2) HARYANA URBAN DEVELOPMENT AUTHORITY, SECTOR-16, FARIDABAD

esent :

Shri M. K. Bhandari, A.R. for the workman.

Shri Randhir Singh, D.D.A. for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana referred the following

dispute between Shri Tek Chand Workman and the Management of Haryana Urban Development Authority, Sector-16, Faridabad and (2) Executive Engineer, Division No. 2, Haryana Urban Development Authority, Faridabad to this Tribunal for adjudication :—

Whether the termination of services of Shri Tek Chand is justified and in order ? If not, to what relief is he entitled ?

2 On notices being given, the parties appeared.

3. The case of the petitioner as set up in the demand notice is that he was appointed as Mechanical Fitter Helper on 1st December, 1980 with Executive Engineer Division No. 2, Haryana Urban Development Authority, Faridabad. He worked there but the respondent abruptly terminated his services on 1st April, 1986. He assailed the order of termination of his service as illegal, unjustified and in contravention of provisions of section 25-F of the Act. He alleged that persons junior to him have been retained in the service while his services were terminated. He has prayed for reinstatement with full back wages and continuity of services.

4. The respondent filed written statement wherein the stand of the petitioner was controverted. It was pleaded that the petitioner was engaged on a particular work on daily wages and after completion of work he was not called for duty. Besides this, the plea was taken that Haryana Urban Development Authority does not come within the definition of 'industry' as it works on no profit no loss basis and the petitioner is not a workman. It was also *inter alia* pleaded that this Tribunal has no jurisdiction to entertain this reference.

5. On the pleadings of the parties, the following issues were settled :—

- (1) Whether HUDA does not come within the purview of industries ? OPR
- (2) Whether the petitioner is not a workman as alleged ? OPR
- (3) Whether this Tribunal has no jurisdiction to entertain the present reference ? OPR
- (4) Whether the termination of services of Shri Tek Chand is justified and in order ? If not, to what relief is he entitled ? OPR

6. The respondent Management examined Krishan Kumar Junior Engineer M-1 whereas the petitioner Tek Chand came in the witness box as WW-1.

7. I have heard Shri M.K. Bhandari learned Authorised Representative for the petitioner and Shri Randhir Singh D.D.A., authorised representative for the respondent and perused the record carefully and my findings on the aforesaid issues are as under :—

Issue No. 1 :

8. The term 'industry' has been given widest amplitude by the Hon'ble Supreme Court in its judgement between Bangalore Water Supply and Sewerage Board, etc., etc. and A. Rajappa and others reported in 1978-1-LLJ-page 349. So viewed from the criteria laid down in this authority, the respondent is an industry as defined in section 2(j) of the Act. So this issue is answered against the respondent.

Issue No. 2 :

9. One of the essential condition of a person being a workman within definition of Section 2(s) of the Act is that he should be employed to do work in the industry as defined in Section 2(j) of the Act. As Haryana Urban Development Authority falls within definition of industry, the petitioner certainly comes within the category of a workman. The issue is answered against the respondent.

Issue No. 3.

10. This issue is not pressed during the argument and is answered against the respondent.

Issue No. 4.

11. Shri Tek Chand Petitioner deposed that he was appointed on 1st December, 1980 in Division No. 2 of Haryana Urban Development Authority, Faridabad and his services were terminated on 1st April, 1986. He stated that no retrenchment compensation was paid to him at the time of termination of his services.

12. On the contrary, Krishan Kumar J.E. MW-1 testified that Tek Chand was employed on 1st April, 1984 and worked up to 31st March, 1986 and thereafter he refused to obey the orders and was turned out.

13. On behalf of the respondent, it was Contended that petitioner was appointed on daily wages and that his services were dispensed with because there was no extra work. In my opinion this contention has got no force. It is immaterial that the petitioner was appointed on daily wages. He continued to work with the respondent for more than one year Krishan Kumar J.E. MW-1 has admitted in cross examination that the workman had worked for more than 240 days in the preceeding year when calculated with reference to the date of termination of his service. It is thus amply established that the petitioner has actually put in more than 240 days in service during the last 12 calendar months from the date of termination of his service. The respondent could not terminate his services without complying with mandatory provisions of section 15-F of the Act because his termination squarely falls within the ambit of term 'retrenchment' as defined in section 2(oo) of the Act. Admittedly no compliance was made by the respondent with the provisions of section 25-F of the Act, and as such the order of termination of his service is not sustainable being illegal and the same is set aside.

14. In the result, I hold that the termination of services of the petitioner is neither justified and nor in order. So the petitioner is ordered to be reinstated with full back wages and continuity of service. No order as to costs. The award is passed accordingly.

Dated, the 11th June, 1987.

S. B. AHUJA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 763, dated the 30th June, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Act.

S.B. AHUJA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 9/4/87-6Lab./5653.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of the Superintending Engineer, P.W.D., (Public Health) Model Town, Karnal.

BEFORE SHRI S.B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 4/1983

Between

SHRI KAMAL KISHORE C/O SHRI CHAMAN LAL DUA FARM NEAR KHADI ASHRAM
NILOKHERI DISTRICT KARNAL, AND THE MANAGEMENT OF M/S. THE SUPERINTENDING
ENGINEER, P.W.D. (PUBLIC HEALTH), MODEL TOWN KARNAL

Present.—

Shri Karan Singh, A.R. for the workman.

Shri. C.L. Sardhana, A.R. for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947 (Hereinafter referred to as the Act), the Governor of Haryana referred the following dispute between Shri Kamal Kishore Workman and the Management of M/s. The Superintending Engineer, P.W.D. (Public Health) Model Town, Karnal, to this Tribunal for adjudication:—

Whether the termination of services of Shri Kamal Kishore was justified and in order? If not, to what relief is he entitled?

2. On receipt of order of reference, notices were issued to the parties who appeared.

3. The case of the petitioner is that he was appointed as Mali-cum-Chowkidar by the Executive Engineer, Public Health Division P.W.D. Karnal with effect from 19th September, 1974 to work at drainage disposal work at Nilokheri. He was transferred to village Gonder from 9th December, 1981 and thereafter he was asked to work at Arjehri and ultimately his services were dispensed with. He has assailed the order of termination of his services as being illegal and has prayed for reinstatement with full back wages.

4. The respondent Management filed its written statement and controverted the stand of the petitioner. It was *inter alia* pleaded that the petitioner is not a workman under the provisions of the Act and is not covered by the Act. On the merits, it was pleaded that the petitioner was appointed with effect from 19th September, 1974 to work at Nilokheri and it was stipulated in the order of appointment that he was appointed against temporary post on work charged basis and that his services can be terminated at any time without assigning any reasons. It was admitted that the petitioner was transferred to village Gonder and he joined his new place of posting on 9th December, 1981 and worked there upto 19th December, 1981. He submitted casual leave for 20th December, 1981 and 21st December, 1981 and thereafter he never turned up to join his duty and remained absent. The Department wrote various letters asking him to join duty but to no effect, and ultimately the Executive Engineer, P.W.D. Public Health Division, Karnal terminated his services,—*vide* order No.6347 dated 22nd April, 1982 in accordance with the condition contained in the appointment letter.

5. The petitioner filed rejoinder wherein he reiterated his stand.

6. On the pleadings of the parties, the following issues were settled by my predecessor Shri R.N. Batra.

- (1) Whether the applicant is not a workman under the provisions of the Industrial Disputes Act, 1947? OPM
- (2) Whether the claimant was not a regular employee and was a work charge employee as pleaded? OPM
- (3) Whether the claimant remained absent from duty as pleaded? OPM
- (4) Whether the provisions of Industrial Disputes Act do not apply to the present reference? OPM,
- (5) Whether the termination of service of Shri Kamal Kishore was justified and in order? If not to what relief is he entitled? OPM

7. The respondent-Management examined Shri Jasbir Singh Junior Engineer MW-1, H.B. Vassan S.D.O. MW-2 and Shri H.K. Grover Executive Engineer, Public Health Division, Yamunanagar MW-3 whereas the petitioner came in the witness box as WW-1. I have heard Shri Karan Singh, learned Authorised Representative for the workman and Shri C.L. Sardhana learned Authorised Representative for the Management and perused the record. My findings on the aforesaid issues are as under:—

Issue No. 1 and 4

8. Both these issues are interconnected and would be discussed together.

9. It was vehemently contended that the functions of Public Health Division P.W.D. of the State are essentially Government functions and these functions neither partake of the nature of trade and business nor are even remotely analogous thereto and therefore this department does not come within the ambit of definition of 'industry' as defined in Section 2(j) of the Act. Consequently the petitioner cannot be considered as workman and his case is not covered under the provision of the Act. There is ample merit in the aforesaid contention. In Full Bench of Punjab and Haryana High Court in the case of State of Punjab Versus Shri Kuldip Singh and another, 1983 Lab- I.C. page 83, their lordships have categorized the functions of the State into four categories viz:—

- (1) The sovereign or the regal functions of the State which are the primary and inalienable rights of a constitutional Government.
- (2) Economic adventures clearly partaking of the nature of a trade and, business undertaken by it as part of its welfare activities.
- (3) Organized activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business.

- (4) The residuary organized governmental activity which may not come within the ambit of the aforesaid three categories.

Of these categories, the Full Bench held that first and the last categories will not fall within the four corners of definition of industry while the second and the third would. In that case, the Court was concerned with the question as to whether the activity of the state with reference to Construction, establishment and maintenance of national and state Highways can be brought within the definition of industry. On an elaborate discussion of the judicial dicta, the Court held that this activity is essentially a Governmental function and is in no way even remotely analogous to trade or business. Hence it cannot possibly come within ambit of an 'industry'.

10. Recently a Full Bench of Punjab and Haryana High Court in other case of Om Parkash V. The Management of M/s Executive Engineer, and another, 1984-Lab. L.C. 1165 has held that functions of Irrigation Department of the State are essentially Government functions and the said Department does not come within the ambit of 'industry'.

11. There is no dispute that there are three wings of Public Works Department of the State namely

- (i) B&R
- (ii) Irrigation
- (iii) Public Health.

The first two wings of the Public Works Departments of the State have been excluded from the definition of the 'industry'. Applying the principles laid down in aforesaid rulings, it must be held that the functions of P.W.D. Public Health Division will also not fall within the ambit of 'industry'.

12. It is well settled that one of the essential condition of a person being workman within the definition of Section 2 (S) of the Act is that he should be employed to do work in an industry as defined in Section 2(j) of the Act. Since P.W.D. Public Health Division's functions do not come within the ambit of 'industry' the petitioner, its employee, can not be considered as a workman.

13. All employees can avail machinery of Civil Court for enforcing their rights, but so far as the Industrial Tribunal and Labour Court are concerned only such employee can avail of the rights who are included in the definition of the workman as specified in Section 2 (s) of the Act.

14. As already noticed above, the petitioner is not a workman and as such his case is not covered by the provisions of the Act. The issues are answered in favour of the respondent-management accordingly.

Issues No. 2, 3 and 5.

15. As already held above the functions of P.W.D. Public Health Division of the State do not come within the ambit of 'industry', this Tribunal has got no jurisdiction to go into merits of this case and decide the dispute. Accordingly it is held that this Tribunal has no jurisdiction to decide this reference.

The 1st June, 1987.

S.B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 764, dated the 30th June, 1987.

Forwarded (four copies) to the Financial Commissioner & Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Act.

S.B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.